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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Assessment and Collection of)
Regulatory Fees for)
Fiscal Year 1995)

MD Docket No. 95-3

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REPLY COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")¹ hereby submits its reply with respect to the Notice of Proposed Rulemaking in the above-captioned proceeding.² In its opening comments in this proceeding, PCIA stated that the Commission's proposed five to ten fold increase in the fees levied on paging providers was not legally, factually, or equitably justified. Rather, it appeared that Part 22 paging licensees were being forced to shoulder a disproportionate share of the increased funding levels to be derived from regulatory fees.

¹ As stated in the opening comments, PCIA and the National Association of Business and Educational Radio, Inc. ("NABER") recently completed the merger of their two organizations, and now operate under the PCIA name as a new legal entity.

² FCC 95-14 (Jan. 12, 1995) ("Notice"). Opening comments in this docket were filed on February 13, 1995.

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Initially, even a cursory reading of Section 9(g) of the Communications Act³ indicates that Commission alteration of its Part 22 paging fee regimen from one based on the number of subscribers to one based on the number of units (call signs or telephone numbers) is inconsistent with the Congressionally-established framework. In Section 9(g), Congress authorized a fee of \$60.00 "per 1,000 [paging] subscribers."⁴ However, in its *Notice*, the Commission proposes to levy a fee for fiscal year 1995 based on "the total number of telephone numbers or call signs that [a licensee] it provides to customers."⁵ The Commission's proposal undermines the structure adopted by Congress and may in fact exceed the statutory authority granted to the Commission to modify the fee schedule.⁶

Beyond such statutory considerations, PCIA argued that, even if the FCC is statutorily empowered to change its fee regimen, the Commission has grossly overestimated the amount of resources it must expend to regulate the paging industry, a largely deregulated marketplace.⁷ In making this factual argument, PCIA pointed out that it was frustrated by the Commission's failure to provide sufficient information about its cost allocation methodology.⁸ In the absence of this data, PCIA indicated that it was unable to assess in a meaningful fashion whether the assignment of costs to

³ 47 U.S.C. § 159(g).

⁴ *Id.*

⁵ *Notice*, ¶ 44.

⁶ *See* PCIA Comments at 5-8.

⁷ *See id.* at 12-13.

⁸ *See id.* at 9-12.

particular services (*i.e.*, paging) within the larger category groupings (*i.e.*, common carrier) was appropriate, whether employees have been inadvertently "double-counted" in determining their allocation for regulatory fee purposes, and whether the Commission in fact *started* with an identification of a preferred fee level in various services, and then worked back to estimate payee volume and applicable cost allocation for the particular service.

In order to make an independent assessment of the Commission's accounting and allocation methods, PCIA filed a request under the Freedom of Information Act ("FOIA") to obtain records and data essential to a full and fair understanding of the Commission's allocation of regulatory costs and its calculation of appropriate fee amounts for particular services as contemplated by the *Notice*.⁹ PCIA hoped that review of the records sought by its *FOIA Request* would permit it to understand the Commission's determinations and to assess whether paging providers are in fact

⁹ On February 6, 1995, PCIA filed its request for access to records relating to the proposals contained in the *Notice* under FOIA. See Letter to Andrew S. Fishel, Managing Director, from Mark J. Golden (Feb. 6, 1995) ("*FOIA Request*"). Although the Commission's partial response is dated February 21, 1995, it was not received by PCIA and its counsel until late afternoon on February 27, 1995 -- the day before these reply comments are due. See Letter to Mark J. Golden from Andrew S. Fishel, Managing Director (Feb. 21, 1995) ("*FCC FOIA Response*"). PCIA accordingly has been able to undertake only a preliminary review of the records provided to it. In addition, the *FCC FOIA Response* indicated that materials requested in items 7, 8, 11, and 12 of the *FOIA Request* are currently unavailable due to software problems. Upon complete review of the FOIA records and/or receipt and review of the currently unavailable documents, PCIA "may present any additional comments it may have concerning matters in this proceeding by an informal submission to the Commission." *Assessment and Collection of Regulatory Fees for Fiscal Year*, MD Docket No. 95-3, DA 94-186 (Feb. 8, 1995).

carrying a disproportionate share of the financial burden of supporting the common carrier activities as prescribed under the proposed fee schedule.

As indicated, PCIA has only been able to undertake an initial review of the partially responsive documents provided by the Commission. Unfortunately, those materials appear to confirm the questions and concerns voiced by PCIA and others with regard to the proposed fee levels for fiscal year 1995. For example, the records supplied to PCIA do not appear to permit PCIA to determine how the total regulatory fee allocation for Common Carrier services was further subdivided among the component categories. PCIA thus far has been unable to determine from the materials sufficient data or methodology explanation to understand the allocation of enforcement, policy and rulemaking, international, and user information activities attributable to Part 22 paging licensees or Public Mobile Radio. While the documents include additional data on the raw number of full time equivalent employees ("FTEs") assigned to various activities within different bureaus and/or service categories, they do not appear to include an explanation of the basis for assigning any given FTE to one activity or another.¹⁰

Indeed, the records both underscore PCIA's existing concerns and questions and raise new questions. PCIA's opening comments urged the Commission to retain

¹⁰ For example, PCIA's experience is that, in many cases, one individual may be engaged in application authorization, policy, enforcement, and information activities. The record in this proceeding still does not disclose the guidelines used by the Commission to ensure a proper allocation of that person's time and effort to specific activities.

subscribers (instead of units) as the basis for calculating fee amounts due from licensees. The FOIA records provided by the Commission contain estimates of paging volume based only on subscribers, not units. Nonetheless, the estimates in the *Notice* for payee volume, purportedly the number of feeable units, apparently carry over the number of subscribers estimates (yet treat that number as the value for units). Moreover, the absence of any data on the issue of subscribers versus units raises questions about the level of legal and equitable consideration in fact given to this matter in the development of the fiscal year 1995 fee proposals.

Similarly, projections for fiscal year 1995 authorization activities and for enforcement, policy and rulemaking, user information, and international activities reflect a *decline* in service authorization FTEs and a substantial *increase* in the number of FTEs assigned to activities falling within the regulatory fee scope.¹¹ These projections, on initial review, are troubling in a number respects, including with respect to the Commission's allocation of FTEs and its assignment of regulatory fee amounts.

Thus, the *FCC FOIA Response* appears to raise more questions than it resolves. Moreover, PCIA is not alone in its sincere questioning of the Commission's methodologies or in its inability to evaluate the proposed fee levels. The comments of other members of the regulated community indicate a general frustration with the minimal level of detail provided by the Commission in the *Notice* regarding how its

¹¹ PCIA recognizes that this increase in numbers reflects at least in part the increase in the number of Commission employees authorized by Congress.

operating budget with respect to enforcement, policy and rulemaking, international, and user information activities is allocated among and within the various services that it regulates. Comsat Video Enterprises, Inc., for example, requests that, "[a]t a minimum, a detailed accounting of the overhead and employees' time and identification of the Section 9 activity undertaken for each [transmit/transmit-receive earth station] licensee is necessary to support and determine the accuracy of the FCC's determinations."¹² Similarly, Cablevision Lightpath questions the Commission's methodology for calculating the number of customers of competitive access providers ("CAPs"), a figure that is essential to an independent assessment of the proposed CAP fees: "[i]nterested parties cannot responsibly address the reasonableness of the Commission's computations given the absence of support for the proposed methodology."¹³ Likewise, The Associated Press notes that "the Commission has provided no explanation for" its allocation of costs to regulate receive-only earth stations.¹⁴

In addition to objecting to the aforementioned paucity of detail regarding the methods used to calculate the proposed dramatic increase in user fees for paging providers, PCIA finds it is virtually impossible to reconcile this proposed five to ten fold fee increase with the Commission's self-characterized striving towards greater

¹² Comsat Video Enterprises, Inc. Comments at 7-8.

¹³ Cablevision Lightpath Comments at 4. *See also* MFS Communications Company, Inc. Comments at 4.

¹⁴ The Associated Press Comments at 4.

efficiencies. In a report detailing the methods by which the Commission proposes to play its role in "reinventing government," a Special Counsel to the Commission stated that:

We [the Commission] . . . have reexamined our mission, improved the efficiencies of our processes and streamlined our operations, redeployed staff to higher priority functions, outsourced some functions that could be performed by the private sector, have sought and will continue to seek legislative changes to allow us to perform functions more efficiently or to stop performing functions, changed our rules to reduce filing burdens on our customers, and have begun to introduce electronic filing and commerce.¹⁵

Any organization that increases its fees for a given service by almost an order of magnitude, and provides nothing more in return for that fee increase, can hardly be said to be "perform[ing] functions more efficiently."¹⁶ Rather, paging providers are being charged more, and receiving the same quantity and quality of regulatory services from the government; this is hardly the "reinvention" Vice President Gore can be said to have had in mind in his three-year quest to streamline federal bureaucracy.

To conclude, PCIA and other commenters understand that the Commission has a statutory mandate to recover certain of its costs through regulatory fees, and that it has been directed to recover almost twice as much money for fiscal year 1995 as it recovered in fiscal year 1994. However, the Commission also has a statutory mandate to match those costs with its regulatory expenditures on an appropriate, related basis.

¹⁵ Mary Beth Richards, *Creating a Federal Communications Commission for the Information Age: Report of the Special Counsel to the Commission on Reinventing Government* (Feb. 1, 1995) at 4.

¹⁶ *Id.*

In order independently to assess whether the Commission has met this latter statutory mandate, PCIA joins with numerous members of the telecommunications community in believing that more detailed cost allocation information must be forthcoming from the FCC.

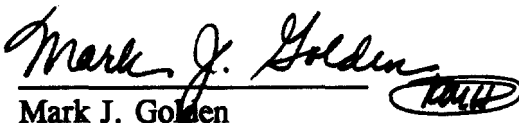
Based on available information, PCIA can only conclude that the proposed fiscal year 1995 fee schedule inequitably burdens Part 22 paging licensees and is inconsistent with the statutory directives.¹⁷ The Commission should instead continue to base the fee amounts on subscribers (instead of units) and should review its allocations of costs

¹⁷ PCIA's view about the inappropriateness of the proposed fee levels for Part 22 paging licenses was supported in the filings of other commenters. *See, e.g.*, AirTouch Paging Comments at 2 ("[C]hanging the fee structure for Public Mobile Radio Services (such as paging) in the proposed manner is neither equitable nor will it serve the public interest."); MobileMedia Communications, Inc. Comments at 1 ("[T]he Commission's proposed fee increase for paging companies is unlawful, arbitrary and unsupportable.").

to insure they are accurate, fair, and appropriate. Such action is necessary to bring the fee schedule into compliance with Congressional goals and the public interest.

Respectfully submitted,

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INDUSTRY ASSOCIATION**

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Dated: February 28, 1995